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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/686,915	10/16/2003	Roger N. Chauza	CHAU-0101US	7480
31782	7590	05/18/2007		
Handley Law Firm, PLLC Roger N. Chauza, PC PO BOX 140036 IRVING, TX 75014			EXAMINER MCMAHON, MARGUERITE J	
			ART UNIT	PAPER NUMBER
			3747	
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			05/18/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/686,915

Applicant(s)

CHAUZA ET AL.

Examiner

Marguerite J. McMahon

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 and 21-27 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-15 and 21-27 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 2/12/07 21 21 07
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____

DETAILED ACTION

A final rejection has been provided, however due to time pressures, the examiner had not previously appreciated the breadth of scope of the claims, and is now providing a new, nonfinal rejection. The examiner apologizes for any inconvenience to Applicant, but in the interest of providing the best possible quality of examination, it is necessary for the examiner to, in effect, start over. Therefore, the finality of the previous Office Action is hereby revoked.

Claim Rejections - 35 USC § 112

Claim 2 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 2 appears to be saying that the visual display indicates the differences in the aftermarket apparatus itself when operational or nonoperational, whereas the specification indicates that the visual display indicates differences in engine performance when the aftermarket apparatus is operational and nonoperational.

Claims 2, 24, and 25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In line 2 of claim 2 "operation...when" should probably be changed to "engine performance when the aftermarket apparatus is--".

In lines 2-3 of claim 24 "simultaneously display an engine performance parameter resulting from the aftermarket apparatus switched in and out of operation" is unclear.

In lines 2-3 of claim 25 "programmed to calculate and display a difference between said engine performance parameters" is unclear.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 6-15 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Parker (6,596,163) in view of Saito et al (5,159,915). Parker shows an engine performance demonstration unit comprising a mobile carrier (i.e. a vehicle), an engine mounted to the mobile carrier, an aftermarket apparatus 10 for use with the engine to modify the properties of fuel to be combusted by the engine and thereby affect the operation of the engine, said aftermarket device comprising several magnets 15, 20, each magnet being held in a metal frame or housing. Saito teaches that it is old in the art to employ a switch for switching an aftermarket apparatus 4 into operation and out of operation while said engine is running based on monitored engine conditions to thereby affect the engine accordingly (see last line of column 1 and beginning of column 2).

It would have been obvious to one having ordinary skill in the art to modify Parker by providing a switch which allows the aftermarket apparatus to be switched into and

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out of operation while the engine is running, in order to provide flexibility of operation of the aftermarket device.

Furthermore, with respect to claims 7 and 12, it would have been an obvious matter of design choice to one having ordinary skill in the art to utilize a valve in a branched fuel line as the switch mechanism, since the device would have functioned in the same way regardless of the type of switch employed. Saito et al is silent as to the type of switch employed.

With respect to claims 8-11, it would have been an obvious matter of design choice to employ a conventional device such as a hinge to provide a means of switching the aftermarket device into and out of operation since the device would have functioned in the same way regardless of the type of switch employed, and to provide three magnets, each with its own frame, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

With respect to claim 13, it would have been obvious to one having ordinary skill in the art to employ a catalytic converter which is capable of being switched into and out of operation with respect to the engine exhaust gases, since it is conventional in the engine art to provide a catalytic converter, and it would be inherent that it would be capable of being switched into and out of operation.

With respect to claim 14, it would be inherent that the engine would have a load, in order to usefully function, and that the load would be switched into and out of

operation, said load inherently providing a resistance to a torque produced by the engine.

Finally, with respect to claim 21, it would have been obvious to one having ordinary skill in the art to provide a programmed processor for controlling said switch mechanism for switching said aftermarket apparatus into and out of operation, since it has been held that broadly providing a mechanical or automatic means to replace manual activity which has accomplished the same result involves only routine skill in the art. *In re Verner*, 120 USPQ 192.

Claims 2-5, and 22-27, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Parker (6,596,163) in view of Saito et al (5,159,915) as applied to claims 1, 6-15 and 21 above, and further in view of Yukihiro (JP)2001341552A). Parker in view of Saito et al show everything except utilizing a visual display for showing the difference in operation of the aftermarket apparatus when operational and nonoperational, the visual display comprising two visual displays, said visual display displaying a parameter related to a pollutant emitted by said engine.

Yukihiro teaches that it is old in the art to employ a visual display which is capable of showing the difference in operation of the engine when the aftermarket apparatus is operational and nonoperational, the visual display showing a parameter related to a pollutant emitted by the engine, and a programmed processor to control the switch mechanism (see abstract). It would have been obvious to one having ordinary skill in the art to modify Parker in view of Saito et al by employing a visual display which is capable of showing the difference in operation of the engine when the aftermarket

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apparatus is operational and nonoperational, in order to provide useful information to the vehicle operator about the performance of the engine.

With respect to claim 4, it would have been obvious to one having ordinary skill in the art to provide a fuel flow gauge as part of the display, in order to inform the vehicle operator as to the level of fuel contained in the fuel tank, as this is conventional in most vehicles.

In addition, it would have been obvious to provide an additional visual display, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

Furthermore, the recitation in claim 22 fails to add a patentable distinction, since the only additional limitation that it provides is to provide a *programmed processor*, which would carry out the process already shown in the prior art. Again, as noted above with respect to claim 21, it would have been obvious to one having ordinary skill in the art to provide a programmed processor to carry out the process shown by the prior art, since it is well known and conventional to computerize engine operations

With respect to claim 23, it would have been obvious to one having ordinary skill in the art to store additional engine performance parameters in the processor and to provide a visual display of these parameters, such as the odometer and other conventional control panel displays utilized in most modern vehicles.

Conclusion


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marguerite J. McMahon whose telephone number is 571-272-4848. The examiner can normally be reached on Monday-Wednesday and Friday, 10am-6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steve Cronin can be reached on 571-272-4536. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Marguerite McMahon
Primary Examiner
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